Before the
Federal Communications Commission
Washington, DC 20556

In the Matter of Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting	WC Docket No. 11-59

COMMENTS OF NEXTG NETWORKS, INC.

T. Scott Thompson
Jennifer Tolland Frewer
DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Avenue, N.W., Suite 200
Washington, D.C. 20006
Tel. (202) 973 - 4200
Fax. (202) 973 - 4499
ScottThompson@dwt.com

H. Anthony Lehv
Robert L. Delsman
Robert A. Millar
NEXTG NETWORKS, INC.
890 Tasman Drive
Milpitas, CA 95131
Tel. (510) 290-3086
ALehv@NextGNetworks.net
RDelsman@NextGNetworks.net
Rmillar@NextGNetworks.net

Counsel for NextG Networks, Inc.

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I. INTRODUCTION AND SUMMARY

NextG Networks, Inc., on behalf of itself and its operating subsidiaries, NextG Networks of NY,Inc., NextG Networks of California, Inc., NextG Networks Atlantic, Inc., and NextG Networks of Illinois, Inc., (collectively "NextG"), files these comments in response to the Notice of Inquiry ("NOI") released April 7, 2011, in the above-captioned proceeding. Through these comments, NextG seeks to provide the Commission with concrete examples of the difficulties encountered by service providers in deploying wireless broadband facilities in the public right of way and appreciates the Federal Communications Commission's ("Commission's") interest in exploring solutions to these impediments to broadband deployment through improved policies regarding access to public rights of way and wireless facilities siting.

NextG provides telecommunications services via distributed antenna system ("DAS") networks. As the Commission has recognized, DAS networks already play an important role in the deployment of wireless broadband services and will continue to do so. In particular, DAS

plays a critical role in deploying broadband wireless services to hard to reach areas and in strengthening network capacity. Wireless broadband deployment today does not only mean generalized coverage at an on-street level. Consumers demand access to wireless broadband in their homes, businesses, and most public facilities, and high bandwidth data uses are driving demand. Thus, providing highly localized service with adequate network capacity is a critical goal for wireless broadband deployment, and it is a goal that DAS is perfectly positioned to meet. However, as described in these comments, NextG has encountered many impediments to timely and efficient deployment of its DAS networks and thus to the deployment of wireless broadband services that NextG's services and networks support.

A critical issue facing the deployment of DAS is the widespread differential treatment imposed on DAS compared to similarly-situated entities. NextG's DAS networks do not provide a wireless service. A DAS network fundamentally provides a wireline transport service, and thus, it is subject to traditional regulation by state public utilities commissions. NextG has obtained a certificate of public convenience and necessity (or its equivalent) from 35 states, Puerto Rico and the District of Columbia.

The facilities NextG installs are the same basic size and shape as the many other telecommunications and public utility facilities that are also installed on utility poles in the public rights of way. Yet, jurisdictions frequently subject NextG to radically different, more time consuming, expensive, and discretionary processes (typically under the guise of "zoning") than are imposed on other public right of way occupants – including NextG's competitors. The sole basis for the differential treatment is the incorporation of small wireless antennas in a DAS network. Thus, the requirements imposed are a result of the wireless nature of the network equipment, not any legitimate, objective public right of way management interest.

Moreover, as anticipated by the Commission in the NOI, many communities' requirements do not reflect changes in technology. In many jurisdictions, NextG's DAS networks, with antennas as small as 18 inches tall and 1 inch in diameter, installed on 30-45 foot utility poles, are immediately lumped into the same local requirements as 100 foot or taller towers and other similar structures. Other delays and impediments are caused by local governments simply lacking any set procedures or standards, which leads to discretionary, arbitrary, and *ad hoc* treatment (again, this is different than the treatment received by other public right of way occupants). Regulatory uncertainty, which inhibits or prohibits investment in deployment, is further exacerbated by the widespread lack of uniformity in treatment. NextG has encountered widely differing local regulatory treatment by communities that are contiguous, such that, what NextG may install as a "permitted" use on one block may be effectively prohibited absent a variance on the next block over, simply because of a change in jurisdiction.

NextG also outlines in these comments how some local governments continue to treat new telecommunications entrants as a funding source and how local "consultants" frequently drive up fees for themselves while simultaneously causing delay. NextG has also encountered municipalities that deny NextG's status as a telecommunications provider and seek to impose franchises and fees in violation of otherwise clear state statutes.

Local authorities also are frequently imposing a third tier of regulation, primarily by controlling or denying the issuance of permits based on their own view of whether a wireless service provider – NextG's customer – has sufficient service coverage and capacity. NextG identifies below how some states have inhibited deployment by granting a single entity access and control over state public rights of way, placing NextG's and others' ability to deploy in the

hands of a competitor. Finally, NextG also discusses how some municipal utilities' pole attachment practices act as a barrier to deployment of wireless broadband.

NextG appreciates the Commission's focus on these issues, and encourages the Commission to take any and all necessary steps to promote the deployment in public rights of way of DAS networks and the wireless broadband services they enable.

II. BACKGROUND ON NEXTG AND DISTRIBUTED ANTENNA SYSTEMS

NextG is a facilities-based carrier's carrier that designs, permits, builds, owns, operates and manages DAS networks that enhance wireless performance. NextG's DAS networks balance the aesthetic requirements of communities and consumers with the network performance needs of wireless carriers. Performance improvements include increased voice and data quality, greater handling of call traffic, more efficient use of spectrum, fewer dropped calls, better mobile broadband coverage, and faster file transfers.

NextG's innovative fiber-optic architecture, low-impact, and low-emission equipment are the foundation of each NextG DAS network. NextG deploys a fiber backbone for each DAS network that connects to antennas placed on utility or other infrastructure poles in the public right of way. Consequently, timely and cost-effective access to public rights of way are essential to NextG's and other DAS providers' ability to deploy their networks and enable coverage for wireless providers.[1] Because the DAS networks are protocol and frequency neutral, they can carry cellular, PCS or any combination of wireless frequencies, standards and technologies. The DAS networks serve residential, urban, and difficult-to-zone areas for numerous carriers of all sizes.

[1] Each antenna placement is referred to as a "node."

Although NextG serves traditional wireless carriers, its DAS networks provide a wireline telecommunications service that is subject to state-level regulatory authority. Essentially, NextG's DAS service is like traditional wholesale telecommunications services such as private line services. Accordingly, NextG has obtained certificates of public convenience and necessity – or the particular state's equivalent – in thirty-five states, Puerto Rico and the District of Columbia. Thus, NextG is or should be on the same regulatory footing as other competitive telecommunications providers, such as CLECs, and other utilities that utilize the public rights of way.

III. THE IMPACT OF LOCAL RIGHT OF WAY AND WIRELESS SITING POLICIES ON DAS DEPLOYMENT

A. Timeliness and Ease of Permitting.

The Commission seeks information on the timeliness and ease of permit processing for rights of way and the siting of wireless facilities.[2] Specifically, the Commission asks whether application processes are "defined with sufficient clarity," and whether "the process for obtaining permits for accessing rights of way or siting wireless facilities [is] timely."[3]

Although NextG has successfully deployed DAS networks in many states, it has far too often encountered local processes that are *not* defined with sufficient clarity and that do *not* provide for a timely review and approval of permits. NextG's state-level regulatory status should exempt it from most local permitting schemes to the extent other CLECs, ILECs, and other users of the public rights of way are exempted. However, as discussed below, local jurisdictions often subject NextG to permitting schemes on the flawed premise that the attachment of an antenna is materially different than other attachments.

[2] NOI at ¶ 14.

[3] *Id.*

Significant delays are frequently encountered because of overly complex, burdensome, discretionary, undefined, and discriminatory local permitting processes. The application processes employed in many jurisdictions lack clarity and are applied on a differential basis. Application components and other required submissions often change as the application process progresses, including critical elements such as hearings. The lack of established timeframes for the permitting process makes it very difficult for companies such as NextG to gauge construction and deployment timelines. The end result is thwarted investment because companies like NextG cannot construct wireless broadband networks on time or their proposals are rejected during project awards because they cannot provide firm cost and time parameters.

The following are a collection of some of the examples of slow and problematic local permitting processes that NextG has encountered. These examples illustrate the tangled web of unnecessary application obstacles that impede the deployment of wireless infrastructure, and ultimately broadband access.

> County of San Diego, CA. The application process in San Diego County is protracted, bureaucratic and replete with hidden, circular and unreasonable requirements. By the County's own admission the application process for DAS nodes may take as long as 18-24 months. In May 2010 NextG filed an application to install 14 DAS nodes in the County. To date, San Diego County still deems NextG's application incomplete—despite NextG's provision of prompt and complete responses to each of the County's four notices of incomplete application (called "scoping" letters by the County).
>
> The County operates on a cost recovery basis and thus each resubmission of its applications in response to a County scoping letter negatively impacts NextG both in terms of time and expense. To date, NextG has expended nearly $40,000 in permitting fees on this allegedly "incomplete" application and has been notified by the County to expect its application review to exceed $98,000 by completion. Each time NextG submits a response to one of the County's scoping letters, the application process starts over and the entire application is routed for review by all applicable county departments—even if these departments had previously signed off on the application. What this means is that multiple departments are reviewing the project multiple times for no reason other than to sign off on the application—all the while billing

time and burning weeks to re-examine previously uncontested portions of the application.

In addition to the exorbitant fees and lengthy permit review timeframe, the County application process also includes excessive "proof" requirements. NextG was required to survey and document that each node location will in fact be located in the public way. Both NextG and its customer were required to complete the Federal Aviation Administration clearance process. These requirements are both costly and time consuming. More importantly, if any changes are made to the location of a node, the work and money invested to complete these tasks are wasted and need to be performed again in order to account for newly-proposed alternative site locations. In other jurisdictions, these same types of requirements typically are imposed only as conditions for approval, once an application is final and staff has no further changes or clarifications, not as criteria for completion of the application itself.

City and County of San Francisco, CA. As the Commission may already know, the City and County of San Francisco has been publicly identified as an extraordinarily difficult place to install wireless facilities. NextG's experience has been consistent with the reputation. NextG was able to deploy in San Francisco initially only after suing the City and obtaining a federal court ruling that the City was violating Section 253 of the Telecommunications Act of 1996 (the "Act" or "Telecom Act") by discriminating against NextG by imposing on it a requirement not imposed on other telephone corporation occupants of the public rights of way.[4] The City's defensive strategy to that lawsuit was to file a complaint at the California Public Utilities Commission ("CPUC") challenging NextG's status as a telephone corporation and alleging that NextG was violating its Certificate of Public Convenience and Necessity.[5]

In January 2011, the City adopted a new wireless ordinance that imposes a radically burdensome and time consuming process for deploying wireless facilities on existing wooden utility poles and streetlights in the public rights of way that subjects NextG and other carriers providing wireless services to the subjective discretion of the City and will require public hearings. All other types of pole-attached equipment, regardless of size, require only a traffic control permit for installation, including wireless antennas belonging to the electric utility. The process under the City's new ordinance will take well over six months and will subject providers to significant uncertainty. The new ordinance also imposes a two year limit on permits (in violation of California law) and purports to terminate 63 nodes installed by NextG pursuant to the

[4] *NextG Networks of California, Inc. v. City & County of San Francisco,* 2006 U.S. Dist. LEXIS 36101 (N.D. Cal. June 2, 2006).

[5] The CPUC denied the City's claim. *City & County of San Francisco v. NextG Networks of California, Inc.*, D.06-01-006 (CPUC Jan. 13, 2006), *modifying order and denying rehearing*, D.06-07-036 (CPUC July 20, 2006).

federal court's order. NextG, T-Mobile, and ExteNet have filed an action in California state court challenging the new ordinance.[6]

City of Laguna Beach, CA. The application process for the City of Laguna Beach requires a separate application for each node. Similar to San Diego County, the determination of completeness of an application takes several rounds of submittals with new information requirements raised each round. In order to obtain approval for a mere 8 nodes, NextG went before four Planning Commission hearings. The first four permits were approved at the second Planning Commission hearing, 18 months after NextG filed its applications. The final permit was approved in June 2011, more than 24 months after the applications were initially filed with the City.

County of Santa Barbara, CA. NextG originally met with Public Works, Planning and the County Executive offices in Santa Barbara County beginning in the spring of 2009 and officially submitted 38 land use permit applications and coastal development permit applications to deploy 38 nodes on *existing* utility poles in the public right of way in early August, 2009. The County agreed to process the 38 permit applications if NextG reimbursed the County for time spent by Planning and Development reviewing the permits. Time estimated for approval was 3-4 months.

Approvals for 27 of the 38 were approved in approximately 5 months, with 9 permits appealed by the public to the Montecito Planning Commission, which is a separate authority within the County. The Montecito Planning Commission granted the appeals for all 9 permits, which NextG was forced to appeal to the Board of Supervisors. The Board of Supervisors largely supported the constituent appeals but ultimately approved 7 of the 9 permits. The remaining permits were approved in approximately 6 months. The final approvals for the appealed sites came in September of 2010, over a year after their original submission. The total amount of time spent by the County's Planning and Development offices totaled $145,173. Fees for applications in Santa Barbara County totaled $194,000.

District of Columbia. Node installations in the public ways of the District of Columbia are subject to a host of competing jurisdictions. The following entities will assert jurisdiction, almost entirely aesthetically oriented, over proposed telecommunications facilities in the public rights of way: the Commission for Fine Arts and the National Capital Planning Commission; additionally, depending upon specific locale within the District, review and consent also may involve any or all of the following: National Park Service – National Capital Region (governing innumerable public spaces, to include the National Mall, a section of Pennsylvania Avenue, many neighborhood parks,

[6] *T-Mobile West Corp., et al. v. City and County of San Francisco*, Case No. CGC-11-510703 (Cal. Sup. Ct. San Francisco).

and some key public ways); Office of the Architect of the Capitol (for the east end of the National Mall and the greater Capitol Hill complex); DC State Historic Preservation Office (because virtually all of the downtown core, known officially as L'Enfant City, has been deemed historic); and, if in Georgetown, the Old Georgetown Board. Timelines for navigating the various, sometime conflicting, processes can only be estimated in years, as consensus must be achieved amongst all jurisdictions, without favor to any one. Although carriers have expressed interest in improving their capacity within the District for years because of significant network demands associated with traffic gridlock, snow emergencies, mass evacuations, and large congregations of users on the National Mall, the uncertain outcome of navigating the myriad jurisdictions has made carriers unwilling to commit to the deployment of a DAS network within the District.

Orange County, FL. After protracted analysis and deliberation over NextG's regulatory status and service offering, pursuant to a formal application to access the public rights of way as a utility certificated by the Public Service Commission, representatives of Orange County, Florida, decided to require that NextG conduct informational community meetings to field questions and comments from citizens residing in the targeted deployment areas as a pre-requisite to receiving work permits, which had been suspended administratively, despite this requirement not being enforced on other carriers and despite their being no formal published requirements to do so. After significant organization and coordination, including spending $12,000 to contract with a local manpower service to place invitational door hangers on approximately 20,000 residences, evening meetings were conducted at two local schools concurrently. Much to the surprise of County officials, only seven citizens attended the two meetings, only one of whom came to earnestly discuss a facility to be installed near his property.

Chicago, IL. NextG originally approached the City of Chicago in September 2004 regarding permitting requirements necessary to construct a DAS network in the City. At the time, the City ordinance contained no relevant provisions for the installation of telecommunications facilities in the public right of way. NextG was advised by the City's Department of Transportation that in order to construct its facilities, NextG would first be required to register with the City's Department of Revenue as a telecommunications carrier, which required the submission of an economic disclosure statement and submission of detailed ownership information (similar to that the process for applying for a CPCN). Next, the City advised NextG that it would be required to enter into a compensation arrangement with the City whereby NextG must agree to, among other things, a franchise fee and conduit lease from the City. Upon registration with the City, NextG was then advised that it could receive a permit from the Department of Transportation to provide service in Chicago. Once the permit was obtained, NextG was required to submit specific plans and engineering specifications and documentation

regarding the specific locations NextG proposed to install within the City. If NextG were to request installation of a new pole, such request would require approval of the City Council. NextG attempted to comply with these requirements under protest and also engaged legal counsel and lobbyist to assist in the process, negotiate a franchise and conduit lease agreement. However, after working with the City for more than two years to meet all of its requirements and negotiate an appropriate franchise agreement, the City decided not to execute the franchise and instead informed NextG that it would develop an ordinance applicable to all carriers requesting access to the public right of way, thus further delaying NextG's construction. Approximately one year later the City developed and approved an ordinance applicable to wireless installations in the public right of way. Ultimately, the initial 5 permits for this network were not issued until spring 2007 with the remainder issued over the following year (all permits were finally issued by spring 2008). NextG spent more than ten times the amount constructing this 22 node network than it does on a similar network elsewhere and a total of 4.5 years attempting to obtain the appropriate right of way permits necessary to construct its facilities.

Village of Northport, NY. The permitting application process for the Village of Northport is at best a convoluted maze of regulatory U-turns. NextG first approached Village officials in November 2009 regarding the permitting requirements for construction of a two node network on existing poles within the public right of way. After months of discussions with Village officials failed to progress, in May 2010, the Village instituted a 3-month moratorium to review its zoning ordinance, which was automatically extended for a second 3-month period. At the end of the 6-month moratorium, the Village enacted a new ordinance with a view to regulate right of way installations such as DAS.[7] As a result of the new ordinance, NextG was required to file new applications for its two node network—resulting in a loss of more than 18 months since NextG initiated the process. Moreover, a consultant for the Village recently contacted NextG with a 10 page spreadsheet of alleged application deficiencies and requests. Some of the most egregious of the Village's requests include the following:

- "…further evidence to support the claim that property values will not be diminished in Northport by the approval of this application."
- "…provide a comprehensive RF plan showing current coverage areas for all carriers in the area."
- "Submit documentation verifying Verizon (the pole owner) concurrence with the use of the system to support other carrier services."
- "Provide evidence of public notice and nonnegative feedback regarding same.

[7] Notably, the Village's new ordinance and new restrictions do not apply to ILEC or other telecommunications installations in the public rights of way – only wireless.

- "Provide evidence of acceptance of final plans from immediately adjacent homeowners and landowners."

As discussed in Subsection F, the Village's expectations are unrealistic and effectively serve as a prohibition on the deployment of wireless broadband service.[8]

City and County of Honolulu, HI. The City and County of Honolulu have a very long process to obtain access to the public right of way. A telecommunications company must obtain an "easement" from the city council, which is estimated to take one year. Only after having an "easement," may the company submit applications, which will extend the permitting process approximately 3-6 more months. NextG has considered constructing a DAS network in Honolulu on and off for several years. However, each time a proposed project comes up, the time (approximately 18 months) it would take to get the necessary permits makes building the network infeasible. In addition, NextG has been told that in order to secure the "easement" from city council, hiring a local lobbyist will be necessary. That adds additional expense to the network and makes the cost of entry prohibitive.

New York, NY. The City of New York's treatment of NextG and DAS deployment is an example of delay, discrimination, and municipal treatment of wireless deployment as a revenue center. In portions of New York City, in particular Manhattan, the City prohibits the installation of utility poles in the public rights of way. The only poles available are City-owned street light and traffic signal poles, thus to deploy a DAS network in New York City, NextG is required to access those City-owned poles. The City also requires new telecommunications entrants to enter into a franchise with the City. However, the City will not issue such a franchise unless and until it has issued a "Request for Proposals" ("RFP"), as if the telecommunications franchise were a grant to do business to a single entity, like garbage collection. For two years, from 2002 to 2004, NextG sought to obtain the franchise that the City requires to access the public rights of way and City-owned poles, but the City would not let NextG even apply because the City had not issued an RFP. Having no other option, in December 2003, NextG filed a complaint in federal court against the City pursuant to 47 U.S.C. § 253. Shortly after NextG filed its complaint, the City issued an RFP.

[8] The demands for information by the Village's consultant also demonstrate another problem facing NextG and wireless deployments in general – municipal consultants. Municipal demands are frequently driven by third party consultants. The consultants typically help the city draft an ordinance that essentially requires the use of the consultant and imposes the cost of the consultant on the applicant. The use of consultants typically only applies to wireless installations and in most cases increases the amount of time and expense associated with permitting wireless facilities. *See MetroPCS New York, LLC v. Village of East Hills*, 764 F. Supp. 2d 441 (E.D.N.Y. 2011); *MetroPCS New York, LLC v. City of Mount Vernon*, 2010 WL 3700845 (S.D.N.Y. July 22, 2010). These two cases dealing with consultants are emblematic of the problem.

> The RFP set up a franchise scheme that is objectionable on multiple levels. For example, under the City's scheme, which is still in place today, access to City-owned poles was auctioned off to the highest bidder. Access to City-owned poles is made available only during certain "reservation periods," which are opened and defined by the City at its discretion. During each "reservation period" the entity that bid the highest amount for pole attachment compensation in response to the RFP is given first option to reserve up to 300 poles, City-wide. Each subsequent franchisee is given the same opportunity in a priority set by its initial blind bid. Thus, if NextG wanted to build a network in Manhattan, it would first have to wait for the City to declare a reservation period, and it would then have to wait for any company with higher priority to make its reservations. This scheme makes planning a network essentially impossible in Manhattan and is inherently discriminatory and time consuming. To the extent other non-City owned poles exist, the City also uses its franchise scheme to prohibit the use of these poles (which are typically located in the middle of blocks). Only if NextG demonstrates to the City's satisfaction an operational need to attach to such mid-block poles can NextG use mid-block poles instead of a City-owned pole on a corner.
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> Although NextG applied under the 2004 RFP issued by the City, NextG was not granted a franchise because NextG objected to the priority and compensation scheme. NextG did not obtain a franchise until 2007 when it accepted the City's scheme, under protest. As a result, NextG has a low priority, despite being forced to pay more in compensation than the lowest priority company from the 2004 RFP process. NextG's litigation with the City regarding this scheme is still pending.

NextG has not attempted to catalog every example where it has encountered delay. NextG has also not attempted to catalog for the Commission all the situations where lack of clarity in the local permitting process has substantially delayed or completely prevented deployment. The Commission should understand instead that NextG spends untold hours simply attempting to obtain from local officials a clear and definitive picture of the permitting requirements. Yet, all of these municipalities already have multiple companies occupying the public rights of way with various poles, lines and equipment. At absolute minimum, operators should be able to fairly quickly and clearly ascertain the process by which they may install facilities in the public rights of way. Unfortunately, that is not the case in numerous communities. Moreover, although these processes are expensive, cumbersome and protracted,

often the only alternative to complying with the municipal requirements is to engage in litigation with the municipality which then creates an adversarial relationship and does not guarantee a favorable outcome with any investment of time and expense.[9]

B. Use of DAS Facilities and Applications to Generate Revenue

The Commission asks for information regarding charges relating to public right of way use and wireless facilities siting.[10] It also seeks comment as to what extent and under what circumstances such charges may be reasonable.[11] In response to the Commission's query, NextG submits that it has encountered patently unreasonable charges in the form of both application fees and "franchise" fees or similar demands for payment by local governments.

With regard to application fees, for example, San Mateo County in California charges a $10,325.70 permit fee per node, which is roughly half the cost of the equipment involved in the most basic node installation. The Town of Hempstead, New York requires $8,500 in escrow fees per node during the application process. Also in New York, the Town of Greenburgh has required NextG to place $105,000 into escrow in order to review the plan for a 21 node network.[12] Moreover, NextG is required to bear the cost of a technical consultant for the Town, whose fees will draw down the amount placed into escrow. Because the consultant is under no

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[9] NextG has been compelled to litigate against the following municipalities: New York City, NY, Los Angeles County, CA, City of Carlsbad, CA, City of Compton, CA, City and County of San Francisco, CA (at least 3 times), City of Huntington Beach, CA, Lynn, MA, Everett, MA, Lansdowne, PA, City of Newport Beach, CA, Town of Brookhaven, NY, and the City of Scottsdale, AZ.

[10] NOI at ¶ 17.

[11] NOI at ¶ 16.

[12] Greenburgh also has insisted on applying its wireless ordinance to NextG's DAS network despite the fact that the ordinance is clearly designed to apply to macro-cell siting. NextG filed 21 permit applications in March 2010. These applications are currently before the Town's Antenna Review Board for the eighth time, with each review alleging new and different "deficiencies."

obligation to act expeditiously, there is a significant risk that NextG will recover very little, if any, of this significant escrow account. Similarly, the County of San Diego has indicated that NextG should expect the fees to process NextG's applications, described above, for 14 nodes to exceed $98,000[13]. None of the jurisdictions have explained or justified why such exorbitant fees are necessary to enable the jurisdiction to review NextG's applications. Rather, the fees appear to be thinly-veiled taxes on wireless services and are seemingly set at levels to discourage companies from seeking to deploy services in the jurisdiction.

Many jurisdictions charge similarly unreasonable "franchise" fees or right of way occupation fees, many of which are poorly disguised attempts to extort revenue from companies seeking access to the public right of way. For example, the Village of Scarsdale, New York asserts that NextG requires "standing" before NextG can even apply for the permits and variances required by the Village's zoning code to install antennas in the public rights of way.[14] In order to obtain "standing," the Village asserts that NextG is required to enter into a revenue sharing agreement with the Village. The "standing" requirement is not contained in any part of the Village's code, nor has it been required of any other certificated telecommunications providers or regulated utilities seeking access the public right of way.[15]

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[13] Twelve nodes will be place on existing poles (6 of which will need to be replaced with taller poles to accommodate California clearance requirements) and only 2 will require the installation of new poles in the public right of way.

[14] Indeed, the Village's Zoning Code effectively prohibits installation of antennas on utility poles in the public rights of way, which the Village has acknowledged. The Village asserts that NextG must apply for a variance of the Zoning Code requirements.

[15] NextG submitted several Freedom of Information Act requests in order to investigate whether the "standing" requirement was imposed on other utilities. In the documentation that NextG received in response to its requests, it became evident that the "standing" requirement is not uniformly imposed on other service providers.

Some of the fees charged in California are similarly egregious. The cities of Oakland and San Jose both charge $26,000 a year in rent in order to attach wireless facilities to a streetlight in the public right of way. Unfortunately, due to other restrictions, these streetlights are frequently the only feasible location to install such facilities. In Newport Beach and Riverside, city ordinances prohibit installation of new poles in designated "underground districts" where utilities located in the public right of way must be placed underground. As a result, companies such as NextG are required to place their facilities on "City-owned light standards" within these underground districts, for which the cities then demand monopolistic rents. Thus, the cities are using their "management" of the public rights of way to prohibit installation of facilities unless NextG uses the cities' poles, for which the cities then demand fees that far exceed what it would cost NextG to install its own utility pole and sometimes even exceed the amount of revenue obtained by NextG for the installations. In California, these demands are made despite the fact that California Government Code Section 50030 clearly prohibits cities from charging fees for use of the public rights of way in excess of the city's actual management costs.[16] Moreover, the charges and fees imposed are not imposed on all other occupants of the public rights of way. The cities are singling out wireless and DAS installations as a revenue source.

NextG is currently engaged in litigation with the City of Scottsdale, Arizona because the City demands $3,011 per node per year despite the fact that Arizona Revised Statute § 9-582 prohibits the City from imposing such fees on telecommunications corporations such as NextG. The City's defense, which has become common in numerous other jurisdictions, has been to challenge NextG's status as a telecommunications corporation, despite the fact that NextG holds a Certificate of Convenience and Necessity from the Arizona Corporation Commission. The

[16] Despite the California statute prohibiting local franchise fees, NextG has entered into franchise agreements in some communities to deploy its networks and avoid protracted litigation.

Arizona Corporation Commission has rejected the City's attempt to re-open NextG's Certificate grant. However, the superior court case is on-going.

Portland, Oregon also has developed an expensive scheme for the use of the public right of way for wireless services. NextG has been advised by the City of annual franchise requirements (based on a percentage of total revenue or mile of fiber) in addition to fees applied to the use of right of way. The fees, beyond franchise, involve: (a) $10,000 annual use fee; (b) $3,000/pole/year (annual 4% adjustment); (c) $2,000 one time application fee/pole; and (d) an audit fee (grantee would pay some portion of the City's audit fees once every five years, not to exceed $5,000). Moreover, parties providing wireless services and deploying in the public way must also post a $10,000 perpetual bond plus a $10,000 construction bond.

NextG is not opposed to paying reasonable and lawful public right of way occupancy fees, but far too frequently cities impose exorbitant fees for the processing of permit applications which in many instances exceed the price of any other permit application fees within a municipality. Moreover, municipalities have attempted to charge carriers deploying relatively small facilities within the public right of way the same rates charged for the use of private property to site tall towers.

C. Ordinances and Statutes Have Not Been Updated to Reflect Current Communications Technologies or Innovative Deployment Practices.

The Commission seeks input on whether state statutes or local ordinances have been updated to reflect current technology and developments in the communications industry.[17] As part of its inquiry, the Commission also asks providers if they have experienced problems or

[17] NOI at ¶ 24.

delays with applications filed in jurisdictions where the laws have not been updated, particularly for the deployment of microcells, picocells and DAS.[18]

This is potentially the most significant issue delaying the deployment of DAS. DAS networks are markedly different from the traditional infrastructure comprising earlier wireless networks. Earlier wireless networks were typically comprised of very large, highly visible towers supporting carrier signals that covered a sizeable geographic area. Antennas on DAS networks are lower power and are installed in public rights of way or utility easements on utility poles, streetlight poles, or traffic poles. A typical tower is 150-300 feet high; utility poles are typically no more than 30-45 feet. Thus, DAS networks are precisely like the facilities of other telecommunications, cable, and electric utility companies located on utility poles.

Yet, local authorities too frequently subject DAS nodes to the same zoning requirements as new towers and other significantly larger structures. For example, in Oakland, California, new utility poles with wireless attachments are characterized as "monopoles," and therefore are subject to macro-cell siting requirements such as setback, screening and landscaping, none of which are practically possible for antennas on utility poles in the public rights of way. Indeed, as discussed below, cities are imposing these requirements on DAS nodes despite the fact that none of the other equipment on the pole, or even the pole itself, was subject to the same review or requirements.

Many jurisdictions also still require individual applications for each antenna within a particular DAS network, rather than allowing all of the nodes that comprise one network to be combined into a single application. The filing of separate applications significantly increases the cost of DAS because application fees for wireless siting in many jurisdictions are quite

[18] *Id.*

excessive, as discussed above. Where individual applications are required for each DAS node, the costs increase exponentially.[19] For DAS networks, the filing of a single application for multiple DAS nodes is a more logical approach, particularly because the node designs and surrounding area are roughly the same.

Ultimately, DAS networks must be treated the same as all other telecommunications facilities in the public rights of way. Attempts to regulate DAS and wireless in the public right of way differently are an inherent attempt to regulate wireless services and RF emissions, not a legitimate exercise of any public right of way management.

D. Discriminatory and Differential Treatment

The Commission asks whether different rights of way users are treated differently, and whether inconsistent or discriminatory treatment of these users is reasonable under certain circumstances.[20]

This is a critical issue. As a DAS provider, NextG is adversely affected by both *discriminatory* behavior and *differential* treatment. Jurisdictions discriminate against NextG when NextG's direct competitors are treated differently despite the fact that both companies offer the same services. NextG is subjected to *differential* treatment where parties operating facilities in the public right of way are subject to less stringent requirements, despite the fact that both NextG and the other parties attach similarly sized facilities to the same utility poles.

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[19] In the County of San Mateo, California, NextG recently requested to submit single application for a 5 node network. All of the nodes will be on existing wooden utility poles and all nodes will be in roughly the same area. The County Planning Department refused NextG's request and is requiring separate applications for each node. As a result, NextG's permit costs will jump from approximately $10,000 to nearly $50,000. This process is particularly burdensome and unreasonable because no other types of pole attachments are subject to similar requirements. Other types of pole attachments are processed administratively through the County's Department of Public Works, not the Planning Department.

[20] NOI at ¶ 26.

Neither form of disparate treatment is reasonable. Rather, any disparate treatment regarding access to the public rights of way and wireless siting is detrimental, and likely to result in diminished competition, diminished investment, and slowed deployment of broadband to consumers.

The fundamental issue, as explained above, is that local officials are increasingly imposing requirements on NextG's installations of wireless antennas in the public rights of way that the local officials do not impose on any other occupant of the same poles in the same public rights of way. In particular, cities are imposing on NextG and other DAS providers full-blown discretionary zoning requirements despite the fact that all of the other equipment installed on the same utility poles – indeed, the poles themselves – were not and are not subject to the same discretionary zoning review.

The sole basis for this discriminatory and differential treatment is the mere fact that the antennas involved in a DAS network emit radio frequencies. Such discriminatory and differential treatment is unjustified, unreasonable, and unlawful. There is no rational basis for the different treatment. NextG's DAS equipment is typically the same size (and frequently smaller) as the equipment installed by other occupants of the public rights of way, such as fiber and equipment boxes installed by ILECs, CLECs, and cable operators, or the transformer barrels installed by electric utilities. Frequently, NextG is installing on poles that have cross arms, fiber splice boxes, and multiple lines. None of those other installations are subject to discretionary zoning review. Yet, cities claim that NextG's installations must undergo burdensome review, frequently including public hearings. It cannot validly be asserted that NextG's antennas justify aesthetic review where other users' attachments do not. If these local officials were genuinely interested in aesthetics, they would apply the same review requirements to the poles themselves

and all of the similarly sized equipment on the poles. As a practical matter, jurisdictions use these requirements on wireless antennas and equipment as an end run around the prohibition on regulating RF emissions and as an impermissible prohibition on wireless service.

There are many examples of this differential treatment. Indeed, it is nearly universal. For example, San Diego Gas & Electric (SDG&E), a public utility, benefits from differential treatment in jurisdictions where NextG is attempting to deploy similar facilities pursuant to its status as a telephone corporation and public utility under its CPCN. SDG&E has deployed a monitoring and control device throughout its service territory known as Supervisory Control and Data Acquisition ("SCADA"). The SCADA system relies upon a communications infrastructure, including antennae and various remote sensors distributed across SDG&E's service territory. The remote unit installations used to convert sensor signals to digital data are similar in size and scope to nodes installed by NextG.[21] SDG&E has recently installed more than 1,200 SCADA installations in the greater San Diego and south Orange County area, consisting of an antenna on a free-standing concrete pole or an existing wooden electric service pole with accessory equipment similar in size to that installed by NextG and other DAS providers.[22] To the best of NextG's knowledge, in these communities, SDG&E has been allowed to install antennas and other telecommunications equipment in the public rights of way without any permits whatsoever, and certainly not subject to the wireless process imposed on NextG, despite being in many of the same locations that NextG has spent tens of thousands of

[21] While the infrastructure is used primarily for SDG&E's internal communication, in numerous respects the facilities are remarkably similar to NextG's; they are installed in the public right of way and utilize frequencies in similar ranges as wireless carriers in the licensed and unlicensed 900 MHz, 700 MHz and other bands.

[22] SCADA accessory equipment typically consists of ground-mounted radio equipment near the base of the free-standing poles, and pole-mounted boxes on the existing pole wooden service poles.

dollars and years or application process seeking access for nearly identical facilities. In other places, like New York City, ILECs are allowed to install all of their equipment and lines in the public rights of way without paying the fees that the cities impose on NextG.

NextG has been in litigation with the City of Huntington Beach, California, for more than three years regarding the City's wireless ordinance, which imposes only on NextG's wireless facilities a discretionary and burdensome zoning process that the City has not imposed on any of the other occupants of the same poles in the same public rights of way. After winning a federal court injunction, NextG was able to install some of its nodes in Huntington Beach, and the pictures of those nodes say a thousand words. A picture of one of NextG's nodes in Huntington Beach is provided at Attachment A. It clearly demonstrates that NextG's very small antennas are barely noticeable amongst the many other communications and electric attachments to the existing utility poles. Any assertion that the City is concerned with the aesthetics is insincere at best, as the City has not imposed the same requirements on all the other occupants.[23]

Another example is Mercer Island, Washington. NextG has investigated constructing a DAS network on Mercer Island, which is well known for having poor wireless coverage. However, the city only allows wireless antennas on the utility pole lines along Island Crest Way.[24] Yet, there are utility poles throughout the island with various types of equipment attachments, but wireless pole attachments are not allowed on any of them.

Again, this type of discriminatory treatment of DAS in the public rights of way is based solely on the existence of wireless elements, and reflects local authorities' attempts to regulate

[23] As in Scottsdale, Arizona, the City of Huntington Beach also challenged NextG's status as a telephone corporation under California law, going so far as to file a complaint at the CPUC claiming that despite multiple prior orders by the CPUC, the CPUC was wrong to grant NextG a certificate of public convenience and necessity.

[24] Mercer Island Code § 19.06.040(C).

wireless services and RF emissions. It is inherently not a reasonable or legitimate exercise of public right of way management.

E. Lack of Uniformity Due to Inconsistent Practices or Rates in Different Jurisdictions or Areas

The Commission asks for input regarding whether "inconsistent treatment of infrastructure providers among states and localities make the deployment of broadband more difficult or time consuming.[25]

NextG offers its services across the country and in localities of all sizes, from massive metropolitan areas such as New York City to suburban communities with much less dense populations. In order to deploy its facilities, despite its state status as a public utility, NextG must meet numerous different permitting requirements in each of the jurisdictions where its DAS networks are constructed. Indeed, local permitting requirements may drastically differ in jurisdictions located in the same general geographic area. Take for example, the following three adjacent cities in San Bernadino County, California:

Apple Valley: processes nodes through a single Special Use Permit within 30 days;
Chino Hills: processes nodes through discretionary conditional use permits that take at least 3-6 months;
City of Rialto: requires design review, minor conditional use permit and variance for antennas located in the public right of way.

Other examples also exist where adjacent communities will have radically different approaches for DAS, with one preferring DAS and the other essentially prohibiting it or at least subjecting it to difficult and uncertain processes. As a result, NextG literally could be constructing a unified network on a single street but stopped at the border between two communities with vastly different requirements. In other instances, NextG has rerouted its fiber

[25] NOI at ¶ 27.

installation around portions of or an entire jurisdiction because it was unable to obtain approval to install its fiber or other facilities in one jurisdiction set between or amongst others. For example, NextG had to build a stretch of fiber into the City of Fountain Valley because the City of Huntington Beach would not permit NextG to install its fiber optic lines on existing utility poles in the public rights of way along a particular stretch of road. The result of course is that residents in certain jurisdictions obtain competitive broadband services while others continue to go unserved or with less competitive options for service.

These differences do more than create an administrative nightmare. They make it difficult or impossible, and extremely expensive, for NextG and others to deploy networks. Moreover, the regulatory uncertainty thwarts investment because NextG and its customers cannot be certain that a network will ultimately be authorized to deploy across multiple communities in a timely manner, thereby denying service.

F. Prohibitions on Deploying Service

Despite a nearly universal increase in the demand for wireless services, deployment of the necessary infrastructure to support wireless coverage is extremely difficult in residential zones. Frequently there are regulations that outright prohibit deployment in such areas within municipalities. In other cases, even though there may not be an outright restriction, deployment is nonetheless effectively prohibited by limiting the locations for deployment to unsuitable areas.

By way of example, the Borough of Lansdowne, Pennsylvania, a small Philadelphia suburb comprising about a square mile and almost entirely zoned residential, has enacted a zoning ordinance relegating wireless facilities, whether installed in the public right of way or on private property, to a small, narrow and commercially zoned corridor. Similarly, the Village of South Orange, NJ has passed an ordinance restricting any new telecommunications facilities to

poles located in the back yard utility easements (*i.e.* outside the public right of way), despite the fact that existing telecommunications facilities are already in the public right of way. However, despite NextG's attempts to attach to back yard poles, the electric utility has taken the position that it cannot issue licenses to NextG under the premise that the existing easement rights were obtained by prescription and do not contemplate NextG's attachments. Worse yet, in the City of Tampa, municipal personnel recently advised NextG during a pre-permit application meeting that, as a matter of policy, the City would not allow the installation of antennas in the public right of way and would require any equipment box not otherwise mounted to a pole (unlikely in light of the statewide pole hardening mandate) be vaulted (*i.e.*, underground). These restrictions, unless undone, would effectively preclude NextG from offering its services within Tampa. NextG is still awaiting a reply form the City Attorney's office to which the matter has been referred. These are but a few of the many examples of how local authorities have adopted requirements that effectively prohibit the deployment of wireless and DAS networks in particular.

G. Third Tier Regulation.

Another subject on which the Commission seeks comment is third tier regulation and whether "government rights of way owners or wireless facilities siting authorities impose requirements that are not directly relevant to intended use."[26] In its NOI, the Commission recognizes that localities have required infrastructure providers to submit information that is not necessary for management of the public right of way and is more akin to a certification requirement imposed by states as part of the application process for a certificate of operating

[26] NOI at ¶29.

authority.[27] NextG submits that requests by local governments for this type of irrelevant information are akin to an attempt by cities to be gatekeepers for what they deem is "sufficient" service to justify deployment in their rights of way. For example, the City of Palos Verdes Estates, California, recently denied NextG's applications for 2 Nodes, asserting that NextG had not demonstrated that NextG's customer had a significant gap in coverage. The City's code does not require such a showing, and the City relied on the assertions of its consultant, which were based solely on on-line coverage maps that contain explicit disclaimers against such use. Essentially, the City was asserting that it has the right to determine whether a provider has sufficient service coverage and capacity, and in so doing, dictating the level of service that the City viewed as adequate (in this case, any outdoor coverage meant that the City could deny applications that it did not like). In addition to being outside the City's authority, this decision ignores the reality that today wireless deployments are not typically done to provide new service, but to enhance capacity needed for increased voice and data demands. Moreover, under such an approach, neither NextG nor any other DAS provider could deploy a DAS network based on the potential needs of multiple wireless carriers.

Another example is the Wireless Ordinance and Wireless Permit Application of the City of Huntington Beach, California (which uses the same consultant as Palos Verdes Estates), which require a demonstration of "need" for the facilities and a demonstration that sites outside the public right of way are not available.[28] The City's requirements violate California Public

[27] *Id*.

[28] City of Huntington Beach Code § 230.96(D) (no wireless permit issued without demonstration that antenna will be "in the least obtrusive location feasible so as to eliminate any gap in service and also includes the following….").

Utilities Code § 7901, which grants telephone corporations such as NextG,[29] a franchise right to install their facilities in the public rights of way. The City's rules deny NextG that right by imposing the City's view of whether facilities should be deployed – although it does not impose the same required showing on non-wireless telecommunications facilities in the public rights of way. Moreover, suggesting that NextG cannot install in the right of way if there are alternatives outside the right of way would effectively prohibit NextG or any DAS company from providing service.

H. State Level Master Service Agreements

NextG submits that the execution of state level master service agreements is another factor that significantly hampers the deployment of DAS networks and other facilities located in the public rights of way. These agreements inhibit competition and create an uneven playing field between service providers seeking to collocate facilities or deploy equipment in the same geographic area.

For example, NextG has consistently objected to Crown Castle's role as exclusive agent with respect to New York state-owned property to the extent that such exclusive agency includes management of the public way. Crown Castle is a direct competitor to NextG and in September 2010, Crown Castle acquired NewPath Networks,[30] which is also a direct competitor to NextG. Moreover, Crown Castle is attempting to use its status to impose fees on NextG which are not imposed on the local ILEC for access to deploy its facilities in the same public right of way. In

[29] NextG's status as a telephone corporation under California law has been confirmed by the CPUC in multiple orders, starting with NextG's CPCN grants and including responses to challenges by cities, such as San Francisco and Huntington Beach.

[30] *See* "Crown Castle International Reports Second Quarter 2010 Results; Raises 2010 Outlook; Announces Agreement to Acquire NewPath Networks," July 28, 2010, *available at* http://investor.crowncastle.com/phoenix.zhtml?c=107530&p=irol-newsArticle&ID=1453288&highlight=

any event, granting of an exclusive contract to manage a state's rights of way has been heard and rejected by the Commission.[31]

Similarly, in 2004, the State of Florida entered into a master services agreement with American Tower Corporation, another direct competitor of NextG. The agreement states that it was intended to foster and manage wireless siting along limited access public right of way (such as interstate highways) and to encourage the use of State-owned property, as well as to include facilities and land as a means of generating revenue and to expand wireless coverage for the traveling public. The agreement was subsequently amended to include DAS. To date, however, NextG has only deployed facilities within non-limited access public right of way, such as arterials and collectors in urban areas. Deployment within limited access rights of way simply is not feasible because doing so would involve engaging American Tower, which in turn would translate into additional fees and expenses that would be cost-prohibitive. Moreover, the introduction of external personnel in the design, engineering, operation and maintenance of NextG's proprietary network would be problematic from a competitive perspective.

I. RF Emissions

Despite the fact that Section 332(c)(7)(B)(iv) clearly prohibits local governments from regulating wireless siting based on fears about RF emissions, and the well-established orders from the Commission and courts, denials based on RF emissions concerns are still pervasive. Frequently, public opposition to a wireless installation will be based almost exclusively on residents' fears regarding RF emissions. In the Town of Hempstead, New York, for example, after NextG had worked with the Town and installed a DAS network pursuant to the Town's

[31] See In re: *Petition of the State of Minnesota for a Declaratory Ruling*, 14 FCC Rcd 21697, at 25-27 (Dec. 23, 1999) (the "Minnesota Order"). In the Minnesota Order, the state sought to provide exclusive access to the public rights of way to the highest bidder.

requirements and with the Town's approval, a group of homeowners sued the Town, NextG, and NextG's customer, MetroPCS, asserting various claims, all of which were explicitly premised on fear of RF emissions. The federal district court dismissed the claims, but NextG and the Town were forced to absorb the cost of defense and were subject to negative publicity.[32]

However, municipal attorneys know that a denial order cannot admit that it is based on RF concerns, so the orders cite pretextual grounds, such as aesthetics. Although carriers have had some success overturning such cases in the courts,[33] the cost and delay of litigation is contrary to the goal of rapid and widespread deployment. This is an area where the Commission should significantly increase its outreach to educate the public that wireless facilities deployed within the Commission's guidelines are safe. Indeed, NextG's DAS nodes are so low powered that they emit between 100 and 1000 times less than the Commission's maximum public exposure limit when measured from the ground directly below the pole. Yet, as the *Merrick Gables* litigation demonstrates, the mere perception of risk from RF is motivating significant opposition to deployment even of radically low power facilities.

J. Municipal Utility Issues

Municipal utilities can represent a particularly difficult challenge for broadband deployment. As a threshold matter, they do not always recognize their obligation as a municipal agency under Section 253 of the Act to treat wireless and DAS companies in the same way they treat other telecommunications providers, believing they have the right to deny access to their infrastructure to wireless providers even where they have made it available to those seeking to attach fiber or cable that is not part of a wireless network. Where they do allow access, some

[32] *Merrick Gables Ass'n, Inc. v Town of Hempstead*, 691 F. Supp.2d 355 (E.D.N.Y. 2010).

[33] *See, e.g., AT&T Wireless of Calif., LLC v. City of Carlsbad*, 308 F. Supp.2d 1148, 1159-60 (S.D. Cal. 2003).

insist upon annual rates in the thousands of dollars per pole attachment, literally thousands of times what they charge other telecommunications providers to attach to the same pole. If other agencies in the municipality deny the telecommunication provider the ability to install their own poles, this sets up a monopoly situation (*i.e.*, the city refuses to allow installation of new poles, forcing NextG to use the municipal utility's poles at monopoly prices).

While NextG has worked diligently to reach agreement with many municipal utilities and developed excellent working relationships with some of these utilities, there are others whose insistence on high rates have created situations where NextG's only option to offer service has been to install new poles. With one such utility, NextG has attempted to negotiate an agreement for over eight years. NextG was recently informed that the utility was unwilling to reduce its rate of several thousand dollars a year, as NextG had other deployment options. Another municipal utility denied NextG's request to be treated in the same fashion as it treated other telecommunications providers who attach to their distribution infrastructure, and instead NextG was quoted a multi-thousand dollar annual attachment rate.

For example, attempts to deploy DAS facilities in Seattle, Washington have been met with significant resistance by the municipal utility (Seattle Power and Light) to allow pole attachments at reasonable rates that would allow NextG to construct its facilities within Seattle. Likewise deployment on Long Island has been thwarted by attempts to seek reasonable attachment rates anywhere close to the regulated rates for attachments from Long Island Power Authority.

While the Commission's authority over municipal utility pole attachments may be limited – or because it is limited – the Commission should consider outreach to these entities, at a minimum, about the negative impact of their actions, and the Commission should consider

recommending to Congress a change in Section 224 of the Act to subject municipal utilities to the Commission's pole attachment authority.

IV. EXAMPLES OF REGULATORY APPROACHES THAT HAVE PROMOTED TIMELY DEPLOYMENT

During its various interactions with government officials across the country, NextG has encountered some state and local jurisdictions that provide positive examples of practices and procedures that serve to foster broadband deployment through efficient and clearly defined application procedures for wireless siting and right of way access. One positive example is the Township of Lower Merion in Pennsylvania, which accounts for and differentiates micro wireless facilities in its wireless ordinance.[34] There, with the guidance of a clear ordinance and assistance of the Planning Director, NextG was able to quickly ascertain the municipal requirements to build its facilities. Within a month of filing its application for 35 nodes, NextG was scheduled for a hearing, a significant time savings when compared with other jurisdictions where NextG has waited many months or years to be scheduled for a hearing for significantly smaller DAS networks.[35]

Some states have alleviated the often unpredictable, time-and-resource-consuming local processes by adopting legislation that effectively preempts municipalities and counties from imposing individual franchise requirements and processes. In such instances, these States have

[34] Lower Merion Code, Chapter 155-141.1.1. Wireless Communication Facilities. Available at http://www.lowermerion.org/Attach/chapters/chap155.html Permit applications are also available at http://www.lowermerion.org/Index.aspx?page=443.

[35] The City of San Jose, California, has a right of way ordinance that similarly provides for a clear path for municipal approval of DAS node attachments. The ordinance treats all equipment equally and does not single out wireless facilities or treat them in a discriminatory fashion. The City's Department of Public Works processes encroachment permits without regard to whether the permit involves installation of wireless facilities. The ordinance does not require a hearing, and the typical processing timeline is 30-60 days for node attachments.

adopted regimes which are intended to streamline, if not minimize, the process of granting access to the public way for the provision of telecommunications services to a provider. For example:

- The **State of Georgia** passed legislation in 2008 that specifies the rights, responsibilities, and due compensation for installing communications facilities in the right-of-way.[36] The application requirements are clearly outlined, and, unless contested, the application may be approved administratively within 60 days, a significant improvement.

- The **State of Florida** enacted a statute in 2002 which establishes a model local ordinance under which telecommunications services providers must register and accept responsibilities for use and occupation of the public way.[37] Compensation is remitted to the Florida Department of Revenue according to specific rates and classifications, with moneys then distributed to the local level.

- The **State of Michigan** passed the METRO Act[38] which promulgates two model legal agreements (the difference simply being the length of the term), which must be passed at the local level within a prescribed period of time; service providers annually report current linear distances of facilities (i.e., cable) deployed in the right of way and in turn remit compensation (upon invoice) comparable to franchise fees to the state level, where the delegated centralized authority distributes same to the respective jurisdictions. Under the Michigan METRO Act, a municipality shall grant to a telecommunications provider a permit for access to the public rights-of-way within its boundaries, and it must do so within 45 days from application for a permit.[39] Moreover, a municipality in a metropolitan area shall not enact, maintain or enforce any requirements applicable to telecommunications providers that require additional fees or consideration for access to the rights-of-way, other than the Metropolitan Extension Telecommunications Right-of-Way maintenance fee (discussed above).[40]

Despite some local issues in these states (most often associated with the lack of knowledge of the state statute and/or local ordinance), in most cases such streamlined legislation has allowed service providers to minimize the front-end approvals often required prior to permitting and allow for more expedited commencement of construction and service provision.

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[36] O.C.G.A § 46-5-1.

[37] Florida Stat. Ann. § 337.401.

[38] MCL §§ 484.3115. Each municipality may require a one-time $500 application fee, if its boundaries include rights-of-way for which access or use is sought by the provider. *Id.* § 484.3106(4).

[39] MCL § 484.3115.

[40] MCL § 484.3104(1).

V. CONCLUSION

NextG hopes that the foregoing information helps the Commission recognize the many impediments that interfere with the deployment of wireless broadband services, and NextG offers its assistance to the Commission going forward. The Commission should take any and all steps within its authority to eradicate the impediments to the deployment of DAS network facilities to ensure a national coordinated effort to improve rights of way and wireless facilities siting policies.

Respectfully submitted,

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T. SCOTT THOMPSON
JENNIFER TOLAND FREWER
Attorneys for NextG Networks, Inc.

Davis Wright Tremaine LLP
1919 Pennsylvania Avenue NW, Suite 800
Washington, DC 20006
(202) 973-4200
scottthompson@dwt.com
jenniferfrewer@dwt.com

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EXHIBIT A

Photograph of existing NextG node in City of Huntington Beach, CA

NextG000046